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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
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11 DANA FEDDERSON, an individual,
12 Plaintiff,

13 v.

14 COX AUTOMOTIVE CORPORATE
15 SERVICES, LLC,
16 COX AUTOMOTIVE, INC.,
17 COX ENTERPRISES, INC.,
18 KELLEY BLUE BOOK CO., INC., and
19 DOES 2 through 50, inclusive,
20 Defendants.
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Case No. 8:24-cv-01322-JWH-JDE

**ORDER DENYING PLAINTIFF'S
MOTION TO REMAND CASE TO
ORANGE COUNTY SUPERIOR
COURT [ECF No. 19]**

Before the Court is the motion of Plaintiff Dana Fedderson to remand this action to Orange County Superior Court.¹ The Court concludes that this matter is appropriate for resolution without a hearing. *See* Fed. R. Civ. P. 78; L.R. 7-15. After considering the papers filed in support and in opposition,² the Court orders that Fedderson's Motion is **DENIED**.

I. BACKGROUND

In March 2024, Fedderson commenced this action against Defendants Cox Automotive Corporate Services, LLC ("Cox"); Cox Automotive, Inc.; and Cox Enterprises, Inc. ("CEI"); and Doe defendants in Orange County Superior Court.³ He asserts seven employment-related claims for relief:

- age discrimination in violation of the Fair Employment and Housing Act ("FEHA");
- disability discrimination in violation of FEHA;

¹ Pl.'s Mot. to Remand Case to Orange County Superior Ct. (the "Motion") [ECF No. 19].

² The Court considered the documents of record in this action, including the following papers: (1) Defs.' Notice of Removal (the "Notice of Removal") (including its attachments) [ECF No. 1]; (2) Compl. (the "Complaint") [ECF No. 1-1]; (3) Motion; (4) Defs.' Opp'n to the Motion (the "Opposition") [ECF No. 20]; (5) Pl.'s Reply in Supp. of the Motion (the "Reply") [ECF No. 22]; (6) Defs.' Obj. to the Reply [ECF No. 23]; (7) Order Re. Motion to Remand [ECF No. 24]; (8) Defs.' Supp'l Opp'n to the Motion [ECF No. 27]; and (9) Pl.'s Supp'l Reply [ECF No. 28]. Although the Court ordered Fedderson to file an Amended Complaint that reflected his best allegations, the Court recognizes that the instant Motion must be "ascertained on the basis of the pleadings at the time of removal." *See Broadway Grill, Inc. v. Visa Inc.*, 856 F.3d 1274, 1277 (9th Cir. 2017); *see also Royal Canin U.S.A., Inc. v. Wullschleger*, 604 U.S. 22, 38, n.8 (2025) (noting that federal jurisdiction determinations related to factual issues, such as citizenship, must be decided based upon the facts and allegations that existed at the time of removal). Accordingly, the Court has not considered the Amended Complaint in connection with the instant Motion.

³ *See* Complaint.

- 1 • retaliation in violation of FEHA;
- 2 • harassment in violation of FEHA;
- 3 • failure to prevent or remedy discrimination, harassment, and retaliation in
- 4 violation of FEHA;
- 5 • interference in violation of the California Family Rights Act (“CFRA”);
- 6 and
- 7 • retaliation in violation of CFRA.⁴

8 Approximately one week after filing the Complaint, Fedderson filed a notice that
9 he had “discovered the true name” of one of the Doe defendants, and he
10 amended his Complaint to reflect that Defendant Doe 1 is “Kelley Blue Book
11 Co., Inc.”⁵

12 In June 2024, Defendants removed the action to federal court on the basis
13 of diversity jurisdiction.⁶ In their Notice of Removal, Defendants asserted that
14 Kelley Blue Book was as sham defendant that Fedderson included as a party
15 defendant in the lawsuit “in an attempt to defeat diversity jurisdiction.”⁷ To
16 support that assertion, Defendants provided a declaration from a Cox executive
17 in which he testified that Kelley Blue Book does not have any employees and
18 that it had never employed Fedderson.⁸

19 Fedderson filed the instant Motion in July 2024.⁹ Fedderson argues that
20 removal was improper because Kelley Blue Book was his joint employer.¹⁰ In

21 ⁴ See generally *id.*

22 ⁵ See *id.*, Ex. B [ECF No. 1-2].

23 ⁶ See Notice of Removal.

24 ⁷ *Id.* at 5:13.

25 ⁸ See Decl. of Melanie Lastrapes in Support of Notice of Removal (the
26 “Lastrapes Declaration”) [ECF No. 1-7] ¶ 2.

27 ⁹ See generally Motion.

28 ¹⁰ See *id.*

1 view of the dispute over whether Kelley Blue Book employed Fedderson, the
2 parties filed various declarations and documents to support their respective
3 positions.

4 II. LEGAL STANDARD

5 Federal courts are courts of limited jurisdiction. Accordingly, “[t]hey
6 possess only that power authorized by Constitution and statute.” *Kokkonen v.*
7 *Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). In every federal case, the
8 basis for federal jurisdiction must appear affirmatively from the record. *See*
9 *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 n.3 (2006). “The right of
10 removal is entirely a creature of statute and a suit commenced in a state court
11 must remain there until cause is shown for its transfer under some act of
12 Congress.” *Syngenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 32 (2002) (internal
13 quotation marks omitted). When Congress has acted to create a right of
14 removal, those statutes, unless otherwise stated, are strictly construed against
15 removal jurisdiction. *See id.*

16 To remove an action to federal court under 28 U.S.C. § 1441, the
17 removing defendant “must demonstrate that original subject-matter jurisdiction
18 lies in the federal courts.” *Syngenta*, 537 U.S. at 33. As such, a defendant may
19 remove a civil action in which either (1) a federal question exists; or
20 (2) complete diversity of citizenship between the parties exists and the amount
21 in controversy exceeds \$75,000. *See* 28 U.S.C. §§ 1331 & 1332. “Complete
22 diversity” means that “each defendant must be a citizen of a different state from
23 each plaintiff.” *In re Digimarc Corp. Derivative Litigation*, 549 F.3d 1223, 1234
24 (9th Cir. 2008). When the litigants are entities, diversity jurisdiction depends
25 on the form of the entity. *See, e.g., Carden v. Arkoma Assocs.*, 494 U.S. 185, 195–
26 96 (1990) (finding that an unincorporated association such as a partnership has
27 “the citizenships of all of its members”). Similarly, a limited liability company
28 is a “citizen of every state of which its owners/members are citizens.” *Johnson*

1 *v. Columbia Properties Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006). In
2 contrast, a corporation is a citizen only of (1) the state where its principal place
3 of business is located; and (2) the state in which it is incorporated. *See* 28
4 U.S.C. § 1332(c)(1).

5 The right to remove is not absolute, even when original jurisdiction exists.
6 In other words, the removing defendant bears the burden of establishing that
7 removal is proper. *See Abrego Abrego v. Dow Chem. Co.*, 443 F.3d 676, 684 (9th
8 Cir. 2006) (noting the “longstanding, near-canonical rule that the burden on
9 removal rests with the removing defendant”); *Gaus v. Miles, Inc.*, 980 F.2d 564,
10 566 (9th Cir. 1992) (“The strong presumption against removal jurisdiction
11 means that the defendant always has the burden of establishing that removal is
12 proper.” (quotation marks omitted)). Any doubt regarding the existence of
13 subject matter jurisdiction must be resolved in favor of remand. *See id.*
14 (“Federal jurisdiction must be rejected if there is any doubt as to the right of
15 removal in the first instance.”).

16 **III. ANALYSIS**

17 In determining whether complete diversity exists, the court may disregard
18 the citizenship of a non-diverse but fraudulently joined defendant. *See Grancare,*
19 *LLC v. Thrower by & through Mills*, 889 F.3d 543, 548 (9th Cir. 2018). “There
20 are two ways to establish fraudulent joinder: (1) actual fraud in the pleading of
21 jurisdictional facts, or (2) inability of the plaintiff to establish a cause of action
22 against the non-diverse party in state court.” *Id.* To establish fraudulent joinder
23 the second way, a defendant must show that the non-diverse defendant “cannot
24 be liable on any theory.” *Id.* Put differently, “if there is a possibility that a state
25 court would find that the complaint states a cause of action” against the non-
26 diverse defendant, then the federal court “must find that the joinder was proper
27 and remand the case to the state court.” *Id.* A defendant carries a heavy burden
28 to establish fraudulent joinder, which “must be proven by clear and convincing

1 evidence.” *Hamilton Materials, Inc. v. Dow Chem. Corp.*, 494 F.3d 1203, 1206
2 (9th Cir. 2007).

3 Here, Defendants argue that Kelley Blue Book was fraudulently joined as
4 a defendant in this action because no court could possibly find that Kelley Blue
5 Book employed Fedderson. To decide whether an employment agreement
6 exists between two parties, the court must “consider the ‘totality of the
7 circumstances’ that reflect upon the nature of the work relationship of the
8 parties, with emphasis upon the extent to which the defendant controls the
9 plaintiff’s performance of employment duties.” *Vernon v. State of California*,
10 116 Cal. App. 4th 114, 124 (2004); *see also St. Myers v. Dignity Health*, 44
11 Cal. App. 5th 301, 311 (2019) (listing relevant considerations). Additionally,
12 “[a] person who regularly employs less than five other persons is not an
13 ‘employer’ for purposes of FEHA prohibitions on discrimination.” *Reno v.*
14 *Baird*, 18 Cal. 4th 640, 650 (1998).

15 Fedderson argues that, under California law, a court could conclude that
16 Kelley Blue Book is liable for violations as his employer because Fedderson
17 provided evidence that (1) Fedderson’s supervisor was employed by Kelley Blue
18 Book; (2) Fedderson attended meetings at the Kelley Blue Book office in Irvine,
19 California; and (3) the Kelley Blue Book website indicates that Kelley Blue Book
20 has employees.¹¹ Defendants, in contrast, provide evidence to rebut each of
21 Fedderson’s claims, as well as evidence to show that Kelley Blue Book has not
22 employed anyone since 2010—before Fedderson began working for Cox.

23 Fedderson overstates the evidence that he has submitted. First,
24 Fedderson’s claim that Kelley Blue Book employed his supervisor, Donny
25 Bliven, rests upon Fedderson’s own declaration, in which Fedderson testifies
26 that Bliven “was a Senior Manager for Kelley Blue Book while he supervised
27

28 ¹¹ See generally Motion; Reply.

[Fedderson].”¹² But Fedderson does not provide any basis for that statement, and it is not clear that the details of Bliven’s employment were within the scope of Fedderson’s personal knowledge. More importantly, Defendants filed a declaration from Bliven, in which Bliven testifies that he “ha[s] never worked for Kelley Blue Book.”¹³ Defendants also provided a declaration from a Human Resources Business Partner Manager, which further supports that Bliven and Fedderson were employees of Cox, not Kelley Blue Book.¹⁴

Second, although Fedderson asserts that he attended meetings at the Kelley Blue Book office in Irvine, California, Defendants clarified that Kelley Blue Book does not own the Kelley Blue Book office because CEI acquired that office in 2010.¹⁵ Employees still “colloquially” refer to the office by its old name, but the office is owned by CEI and used by Cox, not Kelley Blue Book.¹⁶ Defendants’ corporate structure supports Defendants’ claims,¹⁷ and Fedderson has not provided any reason for the Court to question Defendants’ evidence.

Third, Fedderson misinterprets the Kelley Blue Book website, which indicates that Cox employees help facilitate or perform work related to the Kelley Blue Book brand, not that Kelley Blue Book has employees.¹⁸ Even if that were not true, though, it would still be impossible to conclude that Fedderson

¹² Decl. of Dana Fedderson in Support of the Motion [ECF No. 19-3] ¶ 5.

¹³ Decl. of Donny Bliven in Supp. of the Opposition (the “Bliven Declaration”) [ECF No. 20-2] ¶ 1.

¹⁴ Decl. of Gina Walker in Supp. of the Opposition [ECF No. 20-4] ¶ 2.

¹⁵ See Bliven Declaration ¶ 4.

¹⁶ *Id.*

¹⁷ See Lastrapes Declaration ¶¶ 1–3 (explaining that Cox is an indirect subsidiary of CEI and that Kelley Blue Book is a subsidiary of AutoTrader.com, Inc., which is also an indirect subsidiary of CEI).

¹⁸ See Decl. of Joshua M. Webster, Ex. C [ECF No. 19-2].

1 was one of Kelley Blue Book's employees. As reflected in his pay stubs,
2 Fedderson's salary was paid entirely by Cox, not Kelley Blue Book.¹⁹ Fedderson
3 did not list Kelley Blue Book as his employer in his initial Complaint, nor include
4 Kelley Blue Book in his requests for workers' compensation, nor include Kelley
5 Blue Book in his Department of Fair Housing and Employment complaint.²⁰

6 In view of the evidence that the parties have submitted, it would be
7 impossible for a court to conclude that Kelley Blue Book had any control over
8 Fedderson's employment. Kelley Blue Book did not pay Fedderson's salary,
9 provide him with benefits, give him equipment, train him, or exercise any
10 authority over Fedderson. *See St. Myers*, 44 Cal. App. 5th at 311. Nor did
11 Fedderson believe that he was employed by Kelley Blue Book, as he did not even
12 identify Kelley Blue Book as his employer until after he filed this action. Indeed,
13 because Defendants have provided clear evidence that Kelley Blue Book does
14 not have any employees, no court could possibly conclude that Kelley Blue Book
15 qualifies as an employer under FEHA. *See Reno*, 18 Cal. 4th at 650.

16 Accordingly, Fedderson's instant Motion is **DENIED**.

17 **IV. DISPOSITION**

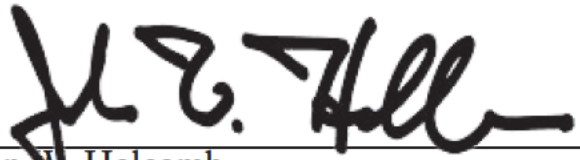
18 For the foregoing reasons, the Court hereby **ORDERS** as follows:

19 1. Defendant Kelley Blue Book Co., Inc. is **DISMISSED** as a sham
20 defendant.

21 2. Fedderson's instant Motion to remand is **DENIED**.

22 **IT IS SO ORDERED.**

23
24 Dated: April 28, 2025

25 
26 John A. Holcomb
27 UNITED STATES DISTRICT JUDGE

28 ¹⁹ See Notice of Removal, Ex. F [ECF No. 1-6].

²⁰ See generally Complaint; Decl. of Deborah Urzua [ECF No. 20-3].